

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
NOVEMBER 4, 2009**

**CALL TO
ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Gordon Cross, Charles Lapp, Frank DeKort, Mike Mower, Jim Heim, Jeff Larsen and Randy Toavs. Marc Pitman had an excused absence. Dianna Broadie, Alex Hogle and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were 12 people in the audience.

**APPROVAL OF
MINUTES**

There were no minutes to approve.

**PUBLIC
COMMENT
(not related to
agenda items)**

Steve Vandehey, 644 Bald Rock Road, Kalispell, wanted to bring to the board's attention the fact that in 2006, amendment proposal FZTA 05-04, a definition for the term 'gravel extraction' was submitted. The commissioners heard the case; did not render a decision regarding the amendment, tabled it and it was neither granted, amended nor denied. So the proposal was still out there. The process was not complete. He quoted regulations which stated the process the amendment being discussed at this meeting and his previous amendment would need to follow.

Cross asked for clarification on the dates which concerned the proposal.

Mayre Flowers, Citizens For a Better Flathead, wanted to speak about the issue of transparency and respect to all who came before government bodies. She spoke about the process the previous proposal had gone through, and what the regulations stated that needed to occur.

FZTA 09-02

This item was a continuation from the October 14, 2009 meeting. The public hearing had been closed for this agenda item. A request by Gary Krueger for a Zoning Text Amendment to Chapter 7 (Definitions) of the Flathead County Zoning Regulations. The proposal would add a definition in Section 7.08 for 'Gravel Extraction', to include post extraction processing activities.

**BOARD
DISCUSSION**

Cross wanted to state that there had been some developments since October 14, 2009. He wanted to make the public aware of

these and put them in the record. He had requested staff prepare an analysis of the materials the applicant gave the board along with their rebuttal and all the associated attachments. He felt at the time, the board and the public deserved the benefit of a professional analysis from staff. There were people of the opinion the professional analysis constituted new material which should not have happened, and in retrospect, he regretted he made that request of staff and took full responsibility.

The second thing which happened was there were some emails which circulated among the board members which discussed their agenda with the county commissioners at the lunch they attended on November 3, 2009. One of the agenda items was the gravel issue in general and there was discussion whether or not to put that issue on the agenda for the luncheon. Those two things together caused staff to have some discussion with the county attorney's office as well as further discussions with the applicant. One of the suggestions from both staff and the county attorney's office was the board could have a new public comment period which would give everybody an opportunity to comment on the new material which was not available at the conclusion of the October 14, 2009 meeting. He said since they had a motion to postpone to a date certain and time certain and that time was now, a new motion to postpone to another date certain, was in order. If members of the board so desired, they could make a motion to postpone the discussion on the floor until such a time as a second public comment period had been held. If that motion was made and seconded, then the board was free to debate postponement. If the motion was not made or was made and not seconded or was made, seconded, debated and defeated, then the board would proceed to discussion of the motion on the floor which was postponed from the last meeting on October 14, 2009.

He again wanted to apologize for anything he did that caused the board's processes to be questioned and the integrity of their process questioned, which to him was of the utmost importance. He had no intention to drag the board through whatever he may have inadvertently stepped in. He apologized again and would like to ask and recognize the applicant so he could give him an opportunity to let the board have the benefit of his opinion on the possibility of a new public comment period.

Gary Krueger said he presented his testimony at the last meeting, staff presented their staff report, public comment was made, and the board had entered into discussion. He asked the board to continue the discussion and make a decision. He had no new rebuttal to present and probably would not at a later date.

Cross reminded everyone present that the amendment would have another full public hearing when it went before the commissioners.

Heim asked about the proposal for another text amendment presented in the public comment period.

The board and staff discussed at length and with detail, the history of the previous proposal and the proper way to proceed with the current proposal.

**MOTION TO
TABLE FZTA
09-02 UNTIL
THE BOARD OF
COMMISSIONERS HAS
DEALT WITH
FZTA 05-04**

Heim motioned and Hickey Au-Claire seconded to postpone FZTA 09-02 until the Board of Commissioners dealt with FZTA 05-04.

**BOARD
DISCUSSION**

Lapp said there was an issue with FZTA 05-04, and the commissioners needed to deal with it. However, since it was in a different area of the regulations, the board should be able to continue with the amendment before them.

The board discussed how the two proposals were different, and if they should continue with the current proposal if the possibility existed the point may be moot depending on what the commissioners ultimately decided.

Larsen read from the regulations what the commissioners' process was in hearing amendments which came before them.

The board and staff discussed the timelines for the hearing of amendments.

Larsen could not understand how the other options besides granted, denied, or granted with conditions were added.

The board discussed how those options could have been presented.

Lapp handed out a handout to the board where all the different references to what he had always thought of a 'gravel pit' appeared and the different wording used. He thought they needed to come up with a definition which covered every part of the regulations which included neighborhood plans.

The board and staff discussed briefly the different definitions, which of the commissioners who heard FZTA 05-04 were still in office, when a timeline ran out on an amendment, what staff could do to bring this issue to the commissioners' attention, the possible ways the commissioners could handle the amendment, and the ramifications for the current amendment FZTA 09-02.

Cross recognized Krueger.

Krueger said with all due respect to the board, he submitted his application and his due process was just as important as Mr. Vandehey's. Mr. Vandehey had his application before the commissioners for three years and never asked the commissioners if they were going to act on the application, stood in front of this board and never mentioned he had a text amendment which had been tabled, and tonight when Vandehey could mess with his due process, this issue came to light. Evidence which had not been mentioned for three years before tonight and to be brought up tonight seemed to be evidence of convenience for Vandehey. There was adequate time for him to bring this to light earlier. For this new information to mess up his due process he thought was unfair.

Mayre Flowers asked if the board was opening the floor to other public comment since they recognized Krueger.

Cross said no, that was a question from a board member to the audience. He said in essence FZTA 05-04 was an amendment which concerned county law and there was no timeline on that. Although due process was involved, he did not believe a delay was undue process.

Mower said the previous application for an amendment should be taken care of before the board considered this amendment.

Lapp and Grieve discussed what could happen to FZTA 05-04 since the majority of the commissioners had not reviewed it.

Mower said they still had the issue of additional information which had come in. They should restart the process.

Cross said that was true, but the motion on the table would not create any new public comment period, all it would do was move it forward as soon as the commissioners had resolved FZTA 05-04.

Larsen talked about process and their duty to follow due process. The planning board had done their job concerning FZTA 05-04. He was not in favor of stopping this amendment for the other one and setting precedence.

Cross said all they could do right now was discuss the merits of the motion on the floor right now. The action they took on the current amendment could compromise what the commissioners decided on FZTA 05-04. FZTA 05-04 was sent to them with a recommendation for denial, if FZTA 09-02 came before them with a recommendation for approval, it could compromise the original FZTA 05-04 in some way.

The board discussed Cross' comment, what should be done with this new information and timelines for zoning amendments.

Larsen asked if the board could recommend to the commissioners what they should do with FZTA 05-04.

Cross said it was up to the commissioners as to what they wanted to do with the application.

**ROLL CALL
VOTE TO
TABLE FZTA
09-02**

On a roll call vote, the motion failed due to a tie vote with Larsen, Lapp, Toavs, and Hickey-AuClaire dissenting.

**BOARD
DISCUSSION**

Cross said the motion on the table now was to accept staff report FZTA 09-02 as findings of fact and they had already attached the materials from Mr. Krueger to the findings. He suggested they run down the findings one by one and discussion them individually.

Larsen asked if they do not agree with the findings did they have to rewrite the findings.

Larsen, Cross, Toavs and Lapp discussed at length the role of findings and staff report with the final decision of the board.

Hickey Au-Claire asked if they needed to add the new rebuttal to the report.

The board and staff discussed at length and with energy the proper way to deal with staff's rebuttal to the applicant's information presented at the previous meeting.

Hickey Au-Claire felt they should table the application so the public, staff and board members could review the information. Her intention was not to delay the applicant's process; however she did not want the public to say the board did not give them enough time to comment.

Lapp asked Grieve if the hearing process in the subdivision regulations was the same for a text amendment.

Grieve said there was not a similarly comprehensive procedure outlined in zoning for consideration of new information as there was in the subdivision regulations.

Lapp asked when this went to the commissioners, could people bring up whatever they wanted.

Grieve said it was a public hearing. Everything that had been printed or discussed was added to the file and it was a public file.

Larsen said the whole thing bugged him because any of them as board members could have gone to staff and had them write stuff up and had it sent to them. It was not done as a board. He said after any hearing any of the board members could go to staff and have them write something up and then it would be new information and then they would have to have another public comment period. He did not think they should start down that track. They had to get the genie back in the bottle. He did not want to set precedence. If they wanted something they needed to ask for it as a board, not just one person.

Heim thought it was a board request. He thought Mr. Krueger's presentation was a serious challenge to the staff report and he thought they wanted to hear back from the staff what they had to say.

The board discussed proper procedure for information to come to the board.

**SECONDARY
MOTION TO
ADD FOF**

Toavs motioned and Hickey-AuClaire seconded to add finding of fact; *it is found that text amendment FZTA 05-04 is currently in front of the commissioners. It appears this amendment is related to the West Valley Zoning District, not the county zoning regulations.*

THE MOTION WAS WITHDRAWN

**BOARD
DISCUSSION**

Cross read finding number one.

Staff requested to strike the last part of the finding due to an editing error.

Cross read finding number two.

Lapp discussed the different definitions for gravel extraction.

**MOTION
(Amend FOF #2)**

Cross motioned and Larsen seconded to amend Finding of Fact #2 by striking the last sentence, as follows: 2. The West Valley Neighborhood Plan Zoning provides the foundation of the West Valley Zoning District Regulations. 'Gravel Extraction' is not defined in FCZR, while 'Extractive Industries' is defined in FCZR 7.06.040 as "Commercial or industrial operations involving the removal and processing of natural accumulations of sand, rock, soil, gravel, or any mineral". ~~The proposed definition for 'Gravel Extraction' is duplicative because it essentially includes the same provisions as the existing definition of 'Extractive Industries'.~~

**ROLL CALL
VOTE
(Amend FOF #2)**

On a roll call vote, the motion passed unanimously.

**BOARD
DISCUSSION**

Cross read finding #3.

The board discussed the definition of primary use and accessory use.

Lapp passed out to the board a handout where he had found different definitions for what he considered a 'gravel pit'. He discussed the different definitions and asked if they used all the different wording or simply used the words 'gravel pit'.

Cross said that was not a good idea because people's definition of gravel pits varied with the individuals.

Larsen said Lapp had wanted to come up with one term defining gravel pits for the growth policy.

Lapp agreed.

Mower thought that Lapp was making this much more difficult than it needed to be. What they had were plans crafted over a significant amount of years when the issues before them now

weren't really issues. He said they needed to come up with the intent of the people who had put together the plans. He said the intent was the same.

Lapp asked what that would be.

Mower, Lapp, and Larsen discussed what the intents and definitions were.

Cross wanted the history of the open cut mining act since the applicant quoted it in his materials. He talked to Rod Samdahl who is the DEQ open cut mining specialist. He said the act occurred in 1984 and the original mining act concerned just a hole in the ground. Then they redid the act and at that point, it went from a page to what it was now. Cross had gone to see him with Pitman because Samdahl's and Pitman's offices were in the same building. Samdahl said the open cut mining act defined open cut mining in terms of what needed to be permitted, and what was regulated by DEQ. Some examples given were an open pit where poles were treated and that was not covered by the open cut mining act, so if that was going on, DEQ had nothing to do with it because it was not mentioned in the open cut mining act as something they regulated. The second thing was, a cement plant or asphalt plant in an unzoned area was not a concern to DEQ because the only things they regulated were asphalt or cement plants which were attached to gravel pits. Samdahl did not think if someone had a cement plant and decided to open a gravel pit, they could regulate it because the cement plant was there before the permit for the gravel pit. The open cut mining act did not define what goes in a gravel pit in any way. What it did say was precisely what could happen that was regulated by DEQ and what needed to be put into the plan of operation to DEQ. That interpretation was enlightening to Cross.

The board discussed Samdahl's interpretation of the open cut mining act.

Larsen had an issue with findings of fact geared toward the West Valley Neighborhood Plan.

Toavs said that was why he did not want to go through all the findings. He asked if they were going to change all of the findings or let the commissioners decide which ones they were going to use. He suggested that if Larsen did not agree with findings, he should make a motion that the change did not just apply to West Valley, it applied everywhere.

Larsen said that all the board members needed to make a decision if they were going to have asphalt or concrete batching plants with gravel extraction.

Cross said they would take a short recess.

The meeting resumed at 8:10 pm.

**SECONDARY
MOTION
(Add FOF)**

Toavs motioned and Larsen seconded to add a finding of fact: *Putting a definition together for 'Gravel Extraction' is a county-wide definition. The wording of such definition needs to accommodate the County's needs, not just West Valley.*

**ROLL CALL
(Add FOF)**

On a roll call vote, the motion passed unanimously.

**BOARD
DISCUSSION**

The board discussed whether or not they needed to go through the findings individually.

Cross discussed the possibility of an increase in traffic which was finding #6.

The board discussed if there would be a significant increase in traffic.

Mower talked about Toavs' condition and that the staff report should reflect more of a county approach instead of a West Valley approach.

Cross said he agreed, although the only place where, from a zoning perspective, the term 'gravel extraction' was listed as a conditional or permitted use was in the West Valley Neighborhood Plan. The other plans use other terms which were not necessarily defined. The definition for gravel extraction would affect the West Valley area more than any other area in the county. He asked Lapp where he pulled his list of definitions from.

Lapp said he pulled them from all of the neighborhood plans. He elaborated on how the definitions differed.

The board and staff discussed at length the use of the West Valley Plan for the staff report, grandfathered gravel pits, what was the definition of 'gravel extraction', primary and secondary uses, industrial uses, and conditioned and prohibited uses.

Cross brought up the definition for gravel extraction tasked to the Board of Adjustment (BOA) by the Supreme Court. He read the definition to the board. He wanted to add that definition to the findings.

The board and staff discussed the definition, the history of how the definition came to be and its relevance to this application.

Larsen asked Bruce Tutvedt his view on the definition as it pertained to his lawsuit.

Mayre Flowers said if they were going to open up the hearing...

Larsen said he could ask a question of anyone he wanted, he was on the board.

Tutvedt said it was his court case.

Flowers said she would like the record to show that the public had been excluded from, that Larsen was selectively inviting. . .

Larsen said this was board discussion and he could ask a question of anyone he wanted and he was not debating her, he asked Tutvedt a question.

Tutvedt said the BOA had to come to an agreement on the definition of gravel extraction, but if the planning board looked at the regulations, it was their job to make a definition. It was their job to bring it forward, they came up with it and then it went to the board of commissioners and that was the proper procedure. As they went back to the BOA, the board continued to say they did not know what the definition was. They had said that in the recent hearing that Krueger brought forward. In his court case and as Larsen had said, they were in court right now, still arguing those conditions. He thought the board could put it in there, it was a fact, but it was not the proper procedure. The proper procedure went through the county planning board as they were doing, to the commissioners and that was how a definition was made. What the BOA did in that case only applied to that one thing, so they could get out of court.

Cross still thought it was a finding. It was something the supreme court directed the BOA to do through the district court.

Mower said that definition applied to one specific incident.

Cross was not sure of that. He did not deal with the BOA. It was hard for him to believe they were going to redefine the term every time it came before them since they defined it once.

The board asked Grieve if the BOA redefined the term 'gravel extraction' every time it came before them.

Grieve said under procedure, the BOA did not have the authority to amend zoning status.

Cross said that was not his question. The question was, whether the BOA had a definition they made a finding of fact on; did they change that definition every time.

Grieve said the BOA did not have separate zoning regulations under which they functioned and the BOA powers were not to create or amend the zoning regulations, they were to review and condition conditional use permits and to look at variances. If a conditional use permit came to them and in that conditional use permit there was a definition of something as part of a condition, then that was ok. They did not create a change to the zoning regulations.

Cross said that was not what he was suggesting.

Grieve said the planning board was responsible for making a recommendation to the governing body who make or amend zoning.

Cross said the question was, the BOA had adopted a finding of fact which defined gravel extraction for a conditional use permit. If they get another conditional use permit for gravel extraction, then they were at liberty to redefine it.

Grieve said part of this question he was sure was being litigated.

The board and staff discussed at length the BOA's process concerning definitions and what their restrictions were and if the definition applied to the West Valley area.

**SECONDARY
MOTION**
(Add a new

Cross motioned and Heim seconded to add a new Finding of Fact: *The board of Adjustment on August 5, 2008 adopted a Finding of Fact that defines 'Gravel Extraction': Gravel "extraction" and*

FOF)

“extractive industry” are not synonymous. Gravel extraction can include on-site crushing and screening as long as the crushed and screened material is end-product to avoid multiple transport trips. An extractive industry may include extraction crushing, screening and asphalt and concrete plants, if appropriate for the site and surrounding area, where the sand and gravel material is processed physically and chemically bound to form other products.

**ROLL CALL
(Add a new
FOF)**

On a roll call vote, the motion failed 5-3 with Lapp, Toavs, Larsen, Mower and Hickey Au-Claire dissenting.

**SECONDARY
MOTION
(Add FOF)**

Toavs motioned and Lapp seconded to add finding of fact: *The Flathead County Planning Board has found that the Staff Report has focused on the West Valley Neighborhood Plan in establishing its findings of fact because of the term “Gravel extraction” being used specifically throughout the plan. It is the Board’s feeling this issue should have been reviewed County wide and is basing its recommendation on the definition for ‘Gravel Extraction’ accordingly.*

**BOARD
DISCUSSION**

The board discussed the fact they did not have a definition for gravel extraction and wording of the finding of fact.

**ROLL CALL
(Add FOF)**

On a roll call vote, the motion passed unanimously.

**BOARD
DISCUSSION**

Cross referred to the list of terms for ‘gravel pit’ Lapp had found and said it did not make sense to him to define one term and leave all the others undefined. He thought they should ask the commissioners if they wanted to look at the issue.

Larsen said it might be good to have a finding telling the commissioners there were all these other terms which needed definitions.

**SECONDARY
MOTION
(Add FOF)**

Cross motioned and Larsen seconded to add a new finding of fact: *‘Gravel Extraction’ and ‘Extractive Industries’ are not the only terms in the planning documents that relate to gravel. Defining ‘Gravel Extraction’ will not add clarity to the other undefined terms.*

**BOARD
DISCUSSION**

The board discussed clearer wording for the motion and the fact they should attach Lapp’s list of different wording concerning gravel to the material to send to the commissioners.

ROLL CALL
(Add FOF)

On a roll call vote, the motion passed unanimously.

BOARD
DISCUSSION

Larsen asked for clarification on the procedures for findings of fact concerning this application.

The board and staff discussed the proper procedure.

ROLL CALL
(Adopt Staff
Report for FZTA
09-02 AS FOF)

On a roll call vote, the motion passed 6-2 with Larsen and Lapp dissenting.

MOTION TO
RECOMMEND
APPROVAL
(FZTA 09-02)

Lapp motioned and Larsen seconded to forward a recommendation of approval of the text amendment, FZTA 09-02, as proposed, to the Flathead County Commissioners.

BOARD
DISCUSSION

Toavs had a problem with the wording, punctuation and therefore the meaning of item #4. He felt the way it was punctuated it referred to three different processing facilities that did three different things.

The board discussed at length the intended meaning of item #4 and if the definition applied to unzoned areas.

Mower said according to the meaning any gravel extraction facility would be able to have an asphalt or concrete plant.

Cross said it could be conditionally approved or prohibited.

The board discussed conditional and permitted uses.

Mower felt they were rewriting what the people who put together the West Valley Neighborhood Plan wanted and applying it county wide.

Cross said that whenever something came up in the West Valley area concerning gravel pits, there was a lot of response from both sides of the issue. He felt the board was taking a top down approach to the problem when it should be a bottom up approach. Up until this application, it had been a raging argument as to what gravel extraction really meant. That was why he was upset it had

not gone through a land use committee. He thought West Valley should figure it out and do it. He said he would deny the application and not let in the other definition either.

Mower said the West Valley Land Use Committee was specifically instructed not to deal with this amendment. It was a county wide issue, not a West Valley issue.

Cross thought the open definition of this amendment, if passed, would be the board imposing something in West Valley that should be debated on and decided by them. There was no other place in the valley which would be affected as much as West Valley would be.

Lapp brought up the different definitions in other places in zoning.

Cross was not willing to take a definition from CALURS and impose it on West Valley.

The board discussed the repercussions for forwarding an approval of this text amendment at length. They also discussed gravel pits in unzoned areas.

Larsen said he had a problem with the fact that if they did prohibit asphalt or concrete plants and there was an area where they were appropriate, the board had stopped it. The reason he thought the amendment was okay was the fact it still had to go through the conditional use process. He could not say there might not be a place out in the West Valley area where a concrete or asphalt plant would be appropriate.

Lapp had concerns about the new laws which had to address gravel resources in the growth policy. There was a serious concern statewide about gravel resources. The board had to address the gravel resources issue.

Mower said the issue was not gravel. The issue was processing facilities regarding asphalt and concrete. He thought what the board was allowing was those facilities in residential areas. He thought that was an issue. Those facilities should be in focused, industrial areas. He did not know how facilities in residential areas could be conditioned to be appropriate.

Lapp asked the board if they thought there was a failure in the conditional use process which was allowing these things.

Mower said right now, they could not have them.

Mower and Lapp discussed if there was a failure in the conditional use permit process which could allow these plants in residential areas.

DeKort pointed out in the zoning regulations where asphalt and concrete plants were separate, not the same, on page 19 of the zoning regulations.

Toavs said that was his point.

Heim said originally he felt if you had a gravel pit, you should be able to have a concrete or asphalt plant, however, what he heard at the meeting changed his mind. The whole point of this request was to get the concrete and asphalt plants in with a gravel extraction definition. He thought they were separate.

**SECONDARY
MOTION**
(Amend item #4)

Heim motioned and Mower seconded to amend item #4 of the proposed definition to read: 4. Processing materials within the area that is to be mined through crushing, screening, ~~asphalt,~~ ~~washing,~~ ~~and concrete plants,~~ and utilizing other equipment used in processing open cut materials;

**BOARD
DISCUSSION**

Cross still felt the application was regulation from the top down when it should be the other way. He felt the commissioners should tell the West Valley area to revise their neighborhood plan or it would be revised for them. They were in trouble as far as gravel issues were concerned.

Hickey Au-Claire said the commissioners kept skirting around the issue. It was unfortunate that Mr. Krueger had to bring forward this text amendment because it was an issue. The commissioners needed to say there needed to be a definition and get it figured out. There definitely needed to be a definition, how that was broken down, she was not sure. It was the most confusing application she had ever seen because of the text wording. She felt it should have been reviewed county wide. The county needed to review it and not just an individual.

Mower said they should vote to either recommend approval or denial as the amendment stood and send it to the commissioners.

ROLL VOTE
(Amend item #4)

On a roll call vote, the motion failed, 1-7 with Larsen, Hickey Au-Claire, Toavs, Mower, Cross, Lapp and DeKort dissenting.

**ROLL CALL
VOTE
(Recommend
Approval of
FZTA 09-02)**

On a roll call vote, the motion failed, 3-5 with Mower, DeKort, Heim, Cross, and Hickey Au-Claire dissenting.

**MOTION TO
RECOMMEND
DENIAL
(FZTA 09-02)**

Heim motioned and Hickey Au-Claire seconded to recommend denial on FZTA 09-02 to the board of commissioners.

**ROLL CALL
(Recommend
Denial
FZTA 09-02)**

On a roll call vote, the motion passed 5-3 with Larsen, Lapp, and Toavs dissenting.

**BOARD
DISCUSSION**

Larsen left the meeting at 9:52.

**WEST VALLEY
VIEWS RESUB.
LOT 2 RESUB.
LOT 1
(FPP 09-05)**

A request by Roy L. Curry Trust for Preliminary Plat approval of West Valley Views, Re-subdivision of Lot 2 of the Re-Subdivision of Lot 1 of West Valley Views; a two (2) lot single-family residential subdivision on 14.96 acres. Lots in the subdivision are proposed to have individual water and septic systems. The property is located at 52 Painted Shadow Road.

STAFF REPORT

Dianna Broadie reviewed Staff Report FPP 09-05 for the Board.

**BOARD
QUESTIONS**

Cross said the residents had a concern about the road connecting to Park View Drive.

Broadie said there was no reason for the road to connect to Park View Drive.

DeKort asked if there was a West Valley Land Use Committee recommendation.

Broadie said there was not. There was not a quorum at the meeting. She was able to talk to the homeowners who would be affected and answered their questions, but there was no recommendation because there was no quorum.

Cross and Broadie discussed how many additional trips on the road there would be.

APPLICANT PRESENTATION	Olaf Ervin, Montana Mapping, said the applicant agreed with all the conditions. The only issue was a bike path, which they would dedicate.
BOARD QUESTIONS	<p>Cross asked if Ervin had read the letter from the homeowners' association.</p> <p>Ervin said they had read it and found there were not any concerns which could not be addressed by the DEQ approval. He explained briefly the history of the application.</p>
AGENCY COMMENTS	None.
PUBLIC COMMENT	<u>Gary Krueger</u> , 805 Church Drive, chairman of the West Valley Land Use Committee spoke. He said they held an informal public hearing since they did not have a quorum. There was no formal presentation from the West Valley Land Use Committee. He wanted to thank staff for being there and presenting the subdivision protest waiver.
APPLICANT REBUTTAL	None.
STAFF REBUTTAL	None.
MAIN MOTION (ADOPT F.O.F.)	DeKort made a motion seconded by Hickey Au-Claire to adopt staff report FPP 09-05 as findings-of-fact.
ROLL CALL (ADOPT F.O.F.)	On a roll call vote the motion passed unanimously.
MAIN MOTION TO RECOMMEND APPROVAL OF CONDITIONS	DeKort made a motion seconded by Heim to adopt Staff Report FPP 09-05 and recommend approval to the Board of County Commissioners.
SECONDARY MOTION TO (Strike Condition #12F)	DeKort motioned and Lapp seconded to strike condition 12F.

ROLL CALL
(Strike Condition
#12F)

On a roll call vote, the motion passed unanimously.

ROLL CALL TO
RECOMMEND
APPROVAL OF
FPP 09-04

On a roll call vote the motion passed unanimously.

COMMITTEE
REPORTS

Committee B had a Large Tract Rural Zoning District (LTR) meeting and was having another on the morning of 11/5/09. They would hopefully be able to make some changes to get it back on the rails. They hoped to have another hearing by the end of this year.

Mower asked if the county was going to give the board some information to look at concerning LTR.

Cross said there was a report coming. He would not be able to be at the meeting on 11/5 due to the fact he was leaving town that morning. He thought they would have something to review before committee B met again. He said they wanted to finish reviewing the rest of LTR. They had only gotten half way through in terms of what the comments were regarding things they potentially would want to change.

Hickey Au-Claire asked if they wanted to pinpoint problems or hot areas so they could work on them.

Cross said they only got partway. He did not think there were many problems.

The board discussed what they thought the county was going to give them for information to look at, and what was expected from the committee.

Cross wanted to talk to Lapp about his not wanting to be on committee B because he did not like regulations but he did like maps. He said if Lapp would hang in there until the end of the year, he thought it was very important to have people who did not like regulations or zoning on the committee. Lapp's perspective would be valuable.

Lapp asked when the meetings usually were.

Hickey Au-Claire reported on what committee A was attempting to do. They were trying to get together with the Flathead Lakers, although that had been difficult. She would like to at least set up a time for committee A to meet to talk about a direction. Some of them still felt it was important to have new maps so they could update the growth policy because the deadline was approaching.

The board and staff discussed meeting times for several meetings.

OLD BUSINESS Lapp asked Grieve about the transportation plan.

Grieve said the public draft was posted to the planning website on Monday 11/2.

Lapp asked when they would be able to get copies of it.

Grieve said they did have one hard copy. Peccia and Associates were sending more in the mail, but it was available on the website and could be printed from there. He was willing to print a copy for Lapp.

The board and staff discussed the differences between the public draft and the administrative draft and when meetings concerning the transportation plan were.

NEW BUSINESS Mower wanted to comment he did not approve of what they sent to the commissioners. He voted to deny because he thought it was so poorly put together, he did not want it to go forward. There were many conceptual things wrong with it. He wondered if there was something the board could do to send better quality work forward. If it would have been him, he would have sent it back and said 'look at all these issues'. What was presented, the board could not make sense of, and it was a hodge podge. The commissioners would not be able to make sense of it. He did not think they did a very good job, but he did not know how they could have done things differently given what they had.

Toavs asked when somebody paid to go through the process, what could be done.

Hickey Au-Claire said the planning office should have returned his money redid the process and done a county review.

Mower said the whole concept was fundamentally flawed.

Cross said Grieve could bring this issue up at a staff meeting and get back to the board under old business. Some of the comments seemed to have tunnel vision about West Valley. He would like to have some discussion on that issue.

Grieve said there had been a lot of office discussion about this issue and how it should be handled. When the application came in, it was an application for a zoning text amendment to create a definition for gravel extraction. Gravel extraction, as the board talked about, was only mentioned in one place where those two words show up in that order and that was in the West Valley Neighborhood Plan. The discussion was, should it be reviewed under the Flathead County Growth Policy because it was in the definitions in the back and totally ignore West Valley's plan. Zoning was an implementation of a plan and he gave several examples of where this was evident. It was a decision made by Harris and was given to Hogle. They could ask Harris when he was available further on this. Grieve said it seemed awkward either way, it was problematic either way. If they were going to review the amendment as an implementation of a plan but it only applied to West Valley, it seemed awkward to ignore the West Valley Plan and only focus on the Flathead County Growth Policy. But the board was right, if it was a definition in the zoning regulations, it applied to all zones, why would they talk just about West Valley. That was why Hogle's staff report had the approach it did.

Mower asked why it was not suggested the methodology was the same as the first one that didn't get acted on. It seemed to him, it was so specific to the West Valley area; it was a text amendment to their zoning.

Grieve said that type of input or guidance from staff was rarely wanted. Someone came to staff with an application for a zoning text amendment in a location they wanted. Staff's suggestions were not appreciated or considered. The role of staff was to review the application based on the request, based on the criteria.

The board discussed what could possibly happen to the text amendment from this point on. They agreed that the commissioners needed to deal with the previous application first.

Grieve said they would follow up with the previous application. He asked if it was appropriate to comment on information presented during public comment.

Cross said it was fine.

Grieve said there were a few documents in the file of the previous application that he considered noteworthy. He said it would take a lawyer to figure it out. They did have an application; it was for a different section of the Zoning Regulations. At the hearing, the applicant came forth with a different zoning text amendment. Mr. Vandehey did have his own comments in the file which referenced his request for a change and it still was to section 3.34. It was a requested change to the West Valley zoning. The public hearing was July 10, 2006. On June 1, 2007, the planning office received a letter on behalf of Flathead Citizens for Quality Growth, who was the applicant, signed by Susan Swager, which stated at that time, Flathead Citizens for Quality Growth withdrew their request and asked that Flathead County return the \$400 fee to them.

Cross thought it was Vandehey's request.

Grieve said Vandehey apparently was a member of Flathead Citizens for Quality Growth. Again, he stressed these documents were noteworthy because he did not know if Susan Swager had the authority to represent Flathead Citizens for Quality Growth. Those were things he needed to talk to Vandehey about. A letter was sent back concerning the refund of the fee. Perhaps since they did not get their \$400 returned, they thought the application was still active. The file warranted further consideration of the documents.

Lapp and Cross discussed further meeting of the planning board and the appointed county board members of other boards around the valley.

ADJOURNMENT The meeting was adjourned at approximately 10:30 pm. on a motion by DeKort. The next meeting will be held at 6:00 p.m. on December 9, 2009.

Gordon Cross, President

Donna Valade, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 1/13/10